

# THE APPROXIMATION OF CRIMINAL LAWS IN THE EUROPEAN UNION: THE DEMISE OF INCONGRUENCY OF LEGAL TERMINOLOGY IN LEGAL TRANSLATION?

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**Abstract:** In legal translation, one of the major challenges is the translation of legal concepts, which may be attributed to the fact that translation of legal texts entails translation not only from one legal language into another legal language, but primarily from one legal system into another legal system. It is generally acknowledged that the incongruency of the SL and TL legal systems makes it impossible for the elements of one legal system to be automatically transposed into another. For this reason, the translation of legal concepts is characterized by the existence of near, partial, and non-equivalents. There are many words, which although perceived as linguistic equivalents, conceptually and/or referentially constitute only partial or non-equivalents. In what follows, I wish to investigate, whether the approximation of serious, transnational criminal offences in the European Union (EU) leads to the demise of the incongruency of legal terminology. The paper encompasses three major parts, of which the first introduces the existence of the incongruency of legal terminology, the successive part expounds the intricate mechanisms that lead to the approximation of criminal laws, and the final provides a comparative analysis of the approximated legal concepts relating to chosen serious criminal offences revealing its consequences on legal translation.

## ZBLIŻANIE PRZEPISÓW PRAWA KARNEGO W UNII EUROPEJSKIEJ: DEMATERIALIZACJA NIEPRZYSTAWALNOŚCI TERMINOLOGII PRAWNICZEJ W TŁUMACZENIU PRAWNICZYM?

**Streszczenie:** Jednym z najpoważniejszych wyzwań, jakie niesie ze sobą tłumaczenie prawnicze jest tłumaczenie pojęć prawnych, które jest spowodowane faktem, iż tłumaczenie prawnicze pociąga za sobą tłumaczenie z jednego systemu prawnego na inny, tym samym powodując niemożliwym automatyczny przekład terminologii z języka źródłowego (JŹ) na język docelowy (JD). W związku z powyższym, tłumaczenie terminologii prawniczej charakteryzuje się występowaniem ekwiwalencji całkowitej, częściowej lub brakiem ekwiwalencji terminów prawnych oraz istnieniem wielu słów, które choć są ekwiwalentami językowymi słów JŹ, pojęciowo i znaczeniowo różnią się od siebie częściowo lub całkowicie. Celem niniejszego artykułu jest zbadanie na ile zbliżenie definicji groźnych ponadnarodowych przestępstw karnych w Unii Europejskiej (UE) ma wpływ na zanik nieprzystawalności terminologii prawnej. Referat podzielony jest na trzy części, a pierwsza z nich prezentuje zjawisko nieprzystawalności terminów prawnych,

następna część ujawnia zawile mechanizmy, jakie doprowadziły do zbliżania przepisów prawa karnego w UE, a ostatnia część stanowi analizę porównawczą wybranych pojęć groźnych, ponadnarodowych przestępstw karnych, ujawniając ich następstwa dla tłumaczenia prawniczego.

*Law retains a sense of cultural homogeneity and gains its essential meanings from its rootedness in the traditional cultural matrix-the inherited environment (Cotterrell 2004:6)*

## **Introduction**

One of the major challenges in legal translation appears to be the translation of legal concepts, which is an immediate result of the fact that legal translation entails not only the translation from one legal language into another legal language, but from one legal system into another, frequently entirely dissimilar legal system. For this reason, some lawyers contemplate, whether law is at all translatable (Beaupré 1987:736, as cited by Šarčević 1997:233), whereas others question the translatability of law asserting that legal translation remains a myth, a sublime aim never to be truly achieved (Kischel 2009:7). However, the volume of translation of laws, policy papers, reports, correspondence, and other written documents for the Commission of the EU by the staff of the Directorate General for Translation, who employ 150 linguists and 600 support staff, which reached 1.8 million pages in 2008, seems to contradict the idea of untranslatability of law, although the fact that translation of law remains a source of major terminological concerns, such as the incongruity of legal concepts, may not be denied. This paper studies how the approximation of criminal laws in the EU affects the perennial problem of the incongruity of legal concepts across various legal systems.

## **Translation of legal concepts: the incongruity of legal terminology and the existence of near, partial and non-equivalents**

Under the positive theories of law, law may be defined as a set of norms that regulate human behavior (Wronkowska 2005:11). These norms vary in different legal systems, because there exist overwhelming differences between the legal systems. Professionals in comparative law assert that the dissimilarities between the legal systems pertain to five criteria, including, inter alia: (1) historical development and background, (2) the distinctive mode of legal thinking, (3) distinctive legal institutions, (4) distinctive sources of law, and (5) ideology (Zweigert and Kötz 1998:68-72). Additionally, law is generally perceived as an inherent component of a given nation's culture, which appears to be critical in the sense that law retains its *uniqueness* in the societies in which it is formulated (Savigny 1975, as cited by Cotterrell 2004:6; Curran 1998, 2002, 2006; Cotterrell 2004, 2006; Grossfeld 2002; Legrand 2005; Rosen 2006; Zweigert and Kötz 1998). For these reasons, legal norms, and hence also legal concepts diverge significantly from one legal system to another making it impossible for the elements of the SL legal

system to be automatically transposed into the TL legal system, thus triggering the existence of near, partial and non-equivalence defined by Šarčević (1997:238-239).

Near equivalence is described as the existence of concepts A and B, which share all of their essential and most of their accidental characteristics (intersection) or when concept A contains all of the characteristics of concept B, and concept B all of the essential and most of the accidental characteristics of concept A (inclusion) (Šarčević 1997: 238). However, the existing functional equivalents are in most cases only partial equivalents, which is characterized by the fact that concept A and B share most of their essential and some of their accidental characteristics (intersection) or when concept A contains all of the characteristics of concept B but concept B only most of the essential and some of the characteristics of concept A (inclusion) (Šarčević 1997: 238). In cases, where only a few or none of the essential features of concepts A and B coincide (intersection) or if concept A contains all of the characteristics of concept B but concept B only a few or none of the essential features of concept A (inclusion), such functional equivalent may no longer be considered as adequate (Šarčević 1997:238-9).

Although literature dedicated to legal translation appears to be rather meager in comparison with the amount of legal instruments translated all over the world per annum, it appears to be replete with examples that address the phenomenon of incongruity of legal terminology. By way of illustration, David (1980:39, as cited by Gotti 2009:56) asserts that in numerous cases the translation of English technical words into French, Spanish or German seems an impossible task owing to the fact that there simply exist no words in the English language to express the most elementary notions of the English law. Such basic notions as *common law* and *equity* are the best examples thereof, whereby no French words or words in any other language appear to be acceptable to convey the meaning of these words, which have strong associations with the exclusive history of the English law (David 1980:39, as cited by Gotti 2009:56).

For the same reasons, the French term *droit*, therefore, may not be considered as conceptually identical to the English word *law*, as the French concept of law appears to be broader than the concept of the English Common Law, which comprises political, science and morality (Cao 2006:57). Under the Civil Law, the definition of law is perceived in relation to the study of political, social and economic sciences and public administration and concentrates on the rights and duties recognized in society according to an ideal justice Dadamo and Farran, as cited by Cao 2006:57).

Similarly, the word *judge* at an American lower court may not be considered to be the same as the German *Richter*, for in the American legal systems the role of professional judges at courts of first instance is limited to instructing the juries and to overruling their verdicts in cases where these are grossly excessive or shock the court's conscience (Grossfeld 1975:20-22, as cited by Brand 2009:23-24), whereas the German legal system advocates the professional judge (Brand 2009:23). Additionally, lay persons, who may become members of the jury under the American Common Law legal system, have only the supportive role, at best, under the Civil Law system (Brand 2009:23).

Other excellent examples of the incongruity of legal terminology include the discrepancies between such French words as: *acteurs sociaux*, *acteurs économiques*, *acteurs institutionnels*, *acteurs publics*, *acteurs politiques*, which have no direct

equivalents in the target languages (Salmasi 2003:117, as cited by Gotti 2009:57), and, therefore, have to be translated into foreign languages by means of transliteration or calque, which is founded on the false assertion that there exists a very close relationship between similar lexemes in different languages such as in examples of *transmettre/transmit*, or *prévoir/foresee* (Seymour 2002: as cited by Gotti 2009:57).

Likewise, the Japanese concept of *jōri* translated in the Western legal cultures into reason, the nature of things, common sense, *ordre public*, or a source of law besides statutes and customary law, may not be treated as words with diverse meanings fortuitously joined together, but as a whole, for this is the way they are conceived by Japanese lawyers in the Japanese legal culture (Kischel 2009:7-8).

Equally, the concepts of *marriage* or *rape* may easily be translated into German *Ehe* and *Vergewaltigung*, until one realizes that the English common law marriage in contrast to the German Civil Law marriage is founded on a decision of a woman and a man to live together (cf. *In re Benjamin*, 34 N.Y.2d 27, 30 [1974], as cited by Kischel 2009:8), and the statutory rape, i.e. sexual intercourse with a minor even with that minor's full consent (Kischel 2009:8). An interesting remark about the concept of rape comes from Judge Rob Blekxtoon (2005:10), from District Court of Amsterdam, who warns that in the Netherlands, rape (*Verkrachting*) is defined as "entering another's body with sexual intentions", therefore, a French kiss administered against the will of the person so kissed is treated as *Verkrachting*.

In an attempt to understand the heart of the matter, David and Brierly (1985:19, as cited by Cao 2006) explain that each legal system possesses terminology employed to express concepts, its rules are arranged into categories, it has techniques for expressing rules and interpreting them, it is linked to a view of the social order itself which determines the way in which the law is applied and shapes the very function of law in that society. For this reason the existence of incongruent legal terms seems to be an irrefutable fact:

the absence of an exact correspondence between legal concepts and categories in different legal systems is one of the greatest difficulties encountered in comparative legal analysis. It is of course to be expected that one will meet rules with different content; but it may be disconcerting to discover that in some foreign law there is not even that system for classifying the rules with which we are familiar. But the reality must be faced that legal science has developed independently within each legal family, and that those categories and concepts which appear so elementary. So much a part of the natural order of things, to a jurist of one legal family may be wholly strange to another (David and Brierly 1985:16).

This opinion has been upheld by René David (cited in Pigeon 1982:277, as cited by Cao), who agrees with the previous opinions that legal concepts stemming from one legal system do not correspond with those from another legal system:

Les concepts du droit anglais sont différent de ceux du droit français, et il n'existe, et ne peut exister, aucun vocabulaire satisfaisant, traduisant en français les mots de la langue juridique anglaise ou traduisant inveresment en anglais les termes usités par les jurists français.

Therefore, de Groot (1987:3,10), asserts that legal translation is more than just a linguistic skill, for legal translation relies heavily on *comparative law*, and it is crucial for legal translators to verify the meaning of legal concepts in legal dictionaries before translating them into a foreign language, i.e. the nature of legal institutions under one legal system must be compared with the nature of an equivalent legal term in another legal system. In other words, the translation of legal terminology must be reinforced by verification of the terms in unilingual dictionaries, which provide an explanation of the terms that are translated, although it must be noted that the translation of legal documents shall be simpler, for one needs to understand that legal concepts from various legal systems hardly ever mean exactly the same thing.

### **The mechanisms that led to the approximation of criminal laws in the EU**

The cultural embeddedness of law accounts for the fact that under the *lex loci*, certain acts are criminalized, while others are not. Additionally, the conceptual meaning of numerous crimes under diversified legal systems of various nations appears to be culture-bound, i.e. it depends in their understanding on the legal systems in which it was defined. The incongruency of legal systems within the territory of the EU makes it possible for the criminals, who may travel freely, to take advantage of the *lacunas* existing between the different EU legal systems. In other words, criminals are free to commit crimes under one jurisdiction and subsequently attempt to evade justice by means of hiding behind the laws of another jurisdiction under which the committed acts are not penalized. Owing to this fact, the only way out might be the harmonization of legal systems or at least the harmonization of the notions of crimes. However, claims are made that the EU Member States are reluctant to give up their sovereignty and the harmonization of laws appears to be an agonizing task, while the change of legal system is regarded as an unattainable goal (Mitsilegas 2009).

One of the prime objectives of the construction of the EU was to create a large European economic market. In that area without internal frontiers, goods, capital and services were to move about and be exchanged freely and without obstacles. However, the fourth freedom, the free movement of persons, soon gave rise to problems different from those caused by the free movement of goods, namely, the problem of the internal security of each Member State, therefore, it was decided that the creation of an area of free movement of persons must be accompanied by flanking measures to strengthen external frontiers and asylum and immigration policies (Craig and de Búrca 2008:232).

The signature of the Schengen Agreement in 1985, as well as Schengen Convention of 1995 brought about a progressive eradication of border controls and enabled the EU citizens to move freely within the territory of the EU. The lifting of

border controls has, however, caused an undesired effect facilitating transnational operational mobility of criminals (Fennelly 2007:5). Such offences, which knew no frontiers, as illicit trafficking in drugs, organized crime, international fraud, trafficking in human beings and the sexual exploitation of children soon appeared as problems of great concern to all the Member States of the EU. Since the scope of law enforcement and criminal justice operates within the boundaries of the criminals' Member State, it became clear that the criminals were taking advantage of the diversity of legal systems under which the offences committed in one EU Member State were not criminalized in another. Therefore, the need to fight *organized crime* as well as *serious crimes of transnational dimensions* have become one of the main motors for the advancement of European integration in the field of criminal law (Mitsilegas 2009:93). The advancement within the field of criminal law, however, has not always been a very straightforward issue, as in a number of instances, the proposed measures to deal with transnational crime clashed with the Member States' domestic criminal law (Mitsilegas 2009:92). This phenomenon was intensified by the fact that the Member States were reluctant to modify their domestic criminal law as a result of EU harmonization in the first place (Mitsilegas 2009:92).

The beginnings of judicial cooperation in the EU date back to 1-2 December 1975, when the Ministers of Interior met in Rome with a view to combat terrorism, radicalism, extremism and international violence (*Terrorisme, Radicalisme, Extremisme, Violence Internationale*), the so-called TREVI Group that met twice a year until 1993, when it was substituted for the meetings of the European Council for Justice and Home Affairs (JHA) (Górski and Sakowicz 2008: 19). This paper examines the key treaties, such as that of the Treaty on European Union (TEU), signed on 1 February 1992 which came into force on 1 November 1993, upheld by the Amsterdam Treaty signed on 2 October 1997, which entered into force on 1 May 1999. Title VI – Provisions on Police and Judicial Co-operation in Criminal Matters, which define the Union's objectives as follows:

to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among Member States in the field of police and judicial co-operation in criminal matters (...) (Art. 29 of TEU).

The objective is to be achieved by preventing and combating crime, organized or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through: (a) closer co-operation between police forces, customs authorities and other competent authorities in the Member States .....; (b) closer co-operation between judicial and other competent authorities of the Member States .....; (c) approximation, where necessary, of rules on criminal matters in the Member States in accordance with the provisions of Article 31(e). (cf. OJ C 340 of 10 November 1997).

Article 34(2) of the TEU provides that Member States shall adopt framework decisions for the approximation of the laws and regulations of the Member States. Framework Decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect.” (OJ C 191 of 29 July 1992).

## **The approximation of serious criminal offences of transnational dimension and its effect on legal translation**

As has been indicated at the beginning of this paper, “law cannot fly free from its cultural foundations” (Cotterrell 2004:6). In the anthropological sense, the word “culture” stands for the “socially acquired knowledge: i.e. the knowledge that someone has acquired by virtue of his being a member of a particular society” (Lyons 1981:302). Many basic concepts that people acquire are *culture-bound*, i.e. they depend for their understanding upon socially transmitted knowledge, both practical and propositional, and vary considerably from culture to culture. Such concepts as: “honesty”, “sin”, “honor” are culture-bound concepts with substantial conceptual meaning differences in different cultures (Lyons 1981:308).

A question arises, whether it is feasible for conceptual meaning of culture-bound legal terms to be standardized and if so, what measures must be applied?

Article 31(1) (e) of the TEU provides for the gradual adoption of “measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties” in certain fields. The Council has already adopted legislative instruments, i.e. *framework decisions*, on fraud involving non-cash means of payment, Euro counterfeiting, money laundering, terrorism, environmental crime, trafficking in human beings and facilitation of unauthorized entry and residence. Other instruments are under discussion in the Council (e.g. Framework Decision on the fight against ship-source pollution, racism and xenophobia). The purpose of framework decisions is to *approximate* the Member States’ legislation and regulations.

The first paragraph of Article I-41 of the Draft Constitution, associated with the area of freedom, security and justice, provides that the EU shall establish that area:

- by adopting European laws and framework laws intended, where necessary, to approximate national laws in the areas listed in Part III;
- by promoting mutual confidence between the competent authorities of the Member States, in particular on the basis of mutual recognition of judicial and extrajudicial decisions;
- by operational co-operation between the competent authorities of the Member States.

Part III of the Draft Constitution, in the Section on judicial cooperation in criminal matters (Article III-171), specifies that this cooperation is to be based on the *principle of mutual recognition of judgments and judicial decisions* and shall include the *approximation of the laws and regulations* of the Member States in certain areas. The Council acting unanimously after obtaining the consent of the European Parliament, may adopt a European Decision identifying other areas of crime. Article III-172 provides that:

European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with cross-border dimensions resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

Under point 1.1 devoted to the objectives, the Commission provides that the approximation of criminal

penalties can satisfy several mutually complementary objectives: (1) by defining common offences and penalties in relation to certain forms of crime, the Union would be putting out a symbolic message, i.e. the approximation of penalties would help to give the general public a shared sense of justice, which is one of the conditions for establishing the area of freedom, security and justice. It would also be a clear signal that certain forms of conduct are unacceptable and punished on an equal basis. By way of illustration, the sexual exploitation of children is a good example, as the approximation of the definition of the offence and of the level of the penalty incurred for it, provides effective and equivalent protection for citizens throughout the Union against a phenomenon that strikes against the principle and values shared by the Member States; (2) the approximation also puts across a message that the same criminal conduct incurs similar penalties wherever the offence is committed. A degree of approximation is needed since certain forms of crime have a transnational dimension and the Member States cannot combat them effectively on their own; (3) Union minimum standards help to prevent offenders from taking advantage of divergences between penalties in the Member States and moving from one to another to evade prosecution or the enforcement of penalties. Point 5 of the Tampere European Council Conclusions, provides that criminals must not find ways of exploiting differences in the judicial systems of Member States.

In the light of the above, the *approximation of criminal laws* constitutes a step towards *establishing common criteria for public order*, it prevents Member State from being converted into a “penal paradise” in relation to others. Thanks to the approximation of criminal laws, the States *diminish the differences between the national legal systems*, so that the criminals could not take advantage of operating in a given State.

The process of *the approximation of criminal laws*, which was implemented with a view to create common standards aiming at ensuring harmony in the Community/Union system of criminal law (Mitsilegas 2009:59) *appears to have profound consequences on legal translation*. Thanks to the approximation of the criminal offences, the *concepts of serious criminal offences of transnational dimension have been standardized*. The framework decisions, under which the approximation takes place do not entail a direct effect. This implies that each Member State must transpose the regulations of comprised in the Framework Decisions into their respective legislations.

The Union has thus far approximated the following offences:

- (1) Fraud against the EC’s financial interests under Convention of July 1995;
- (2) Corruption; the approximation of offences related to corruption in the public sector is addressed in a protocol to the Convention on the protection of the Communities’ financial interests adopted on 27 September 1996 and in a Convention adopted on 26 May 1997; the approximation related to corruption in the private sector is addressed in the Framework Decision approved by the Council on 22 July 2003;
- (3) Fraud and counterfeiting of non-cash payment means under the Framework Decision of 28 May 2001;



- (4) Terrorism under the Framework Decision of 13 June 2002;
- (5) Trafficking in human beings under the Framework Decision of 19 July 2002;
- (6) General damage to the environment under the Framework Decision of 27 January 2003;
- (7) Sexual exploitation of children and child pornography under the Framework Decision of 22 December 2003;
- (8) Drug trafficking under the Framework Decision of 25 October 2004.

This paper investigates the approximation of the definition of terrorism under the framework Decision of 13 June 2002. Article 1 of the said Framework Decision provides that each Member State shall take the necessary measure to guarantee that the acts referred to in points (a) to (i), as defined under national law, if they seriously damage a country or an international organization where committed with the aim of:

- seriously intimidating a population, or
  - unduly compelling a Government or international organization to perform or abstain from performing any act, or
  - seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization,
- shall be deemed to be terrorist offences:
- (a) attacks upon person's life which may cause death;
  - (b) attacks upon the physical integrity of a person;
  - (c) kidnapping or hostage taking;
  - (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
  - (e) seizure of aircraft, ships or other means of public or goods transport;
  - (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
  - (g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
  - (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
  - (i) threatening to commit any of the acts listed in (a) to (h).

Under Article 2, each Member State is to undertake the necessary measures to ensure that the following intentional acts are punishable:

- (a) directing a terrorist group;
- (b) participating in the activities of a terrorist group, including by supplying information or material sources, or by funding its activities in any way, with knowledge of the act that such participation will contribute to the criminal activities of the terrorist group.

Pursuant to Article 3 each Member State undertakes to take the necessary measures to ensure that terrorist-linked offences include the following acts:

- (a) aggravated theft with a view to committing one of the acts listed in Article 1(1);
- (b) extortion with a view to the perpetration of one of the acts listed in Article 1(1);
- (c) drawing up false administrative documents with a view to committing one of the acts listed in Article 1(1)(a) to (h) and Article 2(2)(b).

Under Article 4, (1) each Member State takes the necessary measures to ensure the offences referred to in Articles 1 to 4 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition; (2) each Member State takes the necessary measures to ensure that the terrorist offences referred to in Article 1(1) and offences referred to in Article 4, inasmuch as they relate to terrorist offences, are punishable by custodial sentences heavier than those imposable under national law for such offences in the absence of the special intent required pursuant to Art. 1(1), save where the sentences imposable are already the maximum possible sentences under national law; (3) each Member State takes the necessary measures to ensure that the offences listed in Art. 2 are punishable by custodial sentences, with a maximum sentence of not less than fifteen years for the offence referred to in Art. 2(2)(a), and for the offence listed in Art. 2(2)(b) a maximum sentence of not less than eight years.

In Poland, the legal instruments, whose aim is to combat terrorism are partially within the domain of the administrative law, but in its greater part within the domain of the penal law. The former include the Act of 13 June 2003 on Foreigners, or competences and duties of the authorities established to prevent and combat terrorism, while the latter comprises articles of the Penal Code devoted to prevention and combating terrorism. Additionally, under the Polish law one of the most significant law instruments related to combating terrorism is the Act of 16 November 2000 on money laundering and financing terrorism. The Polish law, i.e. the Penal Code amended under the Act of 16 April 2004 on Amendment of Act – Penal Code and other Acts, prior to Poland's accession into the structures of the EU on 1 May 2004, under Article 115 section 20 defines a terrorist act in the following words: A terrorist act is as a prohibited act, which is subject to a custodial sentence of at least 5 years committed with a purpose of:

- (a) seriously intimidating of a population,
- (b) unduly compelling a Government, another country or an international organization to perform or abstain from performing any act,
- (c) seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization, or a threat o commit such an act.

Under the same Act, the amended Article 258 of the Penal Code has received the following wording: Art. 258 section 1: whoever participates in an organized group or an organization, whose purpose is to commit an offence or a fiscal offence is subject to deprivation of liberty for a period of time from 3 months to 5 years; Art. 258, section 2 provides that: If a group or organization stipulated for in section 1 has a military character, or acts with a view to commit a terrorist act, the perpetrator is subject to penalty of deprivation of liberty for a period of time from 6 months to 8 years; section 3 provides that: whoever sets up or leads such a group or organization is subject to penalty of deprivation of liberty for a period of time from one year to 10 years; section 4 provides that: Whoever sets up or leads such a group or organization with a view to commit

a terrorist act is subject to penalty of deprivation of liberty for period of time not shorter than 3 years.

The conceptual meaning of the terrorist offence, as indicated under the Polish law has been approximated in accordance with the Framework Decision of 13 June 2002. The definition of a terrorist act may be considered as conceptually partially equivalent with the definition comprised in the said Framework Decision.

Under Article 11(1) Member States are required to comply with the Framework Decision by 31 December 2002.

In the United Kingdom, pursuant to the Terrorism Act of 2000, as amended in 2006, terrorism is defined as follows:

- (1) in this Act "terrorism" means the use of threat of action where-
  - (a) the action falls within subsection (2),
  - (b) the use of threat is designed to influence the government or to intimidate the public or a section of the public, and
  - (c) the use of threat is made for the purpose of advancing a political, religious or ideological cause.
- (2) Action falls within this subsection if it-
  - (a) involves serious violence against a person,
  - (b) Involves serious damage to property,
  - (c) endangers a person's life, other than that of the person committing the action,
  - (d) creates a serious risk to the health or safety of the public or a section of the public, or
  - (e) is designed seriously to interfere with or seriously disrupt an electronic system.

The Terrorist Act of 2006, Part 1 comprises such offences related to terrorism as: I. encouragement of terrorism; (2) dissemination of terrorist publications; (3) Application of ss.1 and 2 to internet activities, etc.; (4) Giving notices under s.3.; II Preparation of terrorist acts and terrorist training: (5) preparation of terrorist acts; (6) training for terrorism; (7) powers of forfeiture in respect of offences under s. 6; (8) attendance at a place used for terrorist training; III. Offences involving radioactive devices and materials and nuclear facilities and sites (9) making and possession of devices or materials; (10) misuse of devices or material and misuse and damage of facilities; terrorist threats relating to devices, material and facilities; trespassing etc. on nuclear sites.

The comparative analysis of the definition of terrorism approximated under the Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA), by the Republic of Poland and the United Kingdom as confirmed on the basis of appropriate laws implemented by the two Member States leads us to *a striking observation*. The approximation of criminal laws undertaken in this case with a view to effectively prosecute the terrorist offence, because victims of terrorist offences are vulnerable, because there is a need for reciprocal action for the primary aim of the EU to provide its citizens with a high level of safety within an area of freedom, security and justice, surprisingly reveals that the cultural barriers in legal translation have been reduced.

The obvious conclusion is that despite the fact that harmonization of criminal law is a very delicate issue, as the Member States are reluctant to give up their

sovereignty, in cases of serious, grave criminal offences of transnational dimension, the Member States stand united against those, who wish to pose a threat to the ideas of human dignity, liberty, equality and solidarity, respect for human rights and fundamental freedoms, the principle of democracy and the principle of the rule of law, which are common to all the EU Member States.

The conceptual meaning of terrorism has been standardized, as a result, the notions of the terrorist act in Poland and the UK are fundamentally alike. Both definitions clearly declare that terrorism is a prohibited act involving serious intimidation of a population, unduly compelling a Government, another country or an international organization to perform or abstain from performing any act, serious destabilizing or destroying the political, economic or social structures of a country or an international organization, or a threat to commit such an act. Although they may not be regarded as near equivalents, owing to the fact the wording of the two definitions is not identical, they may be considered as partial equivalents according to the definition of partial equivalents provided in the first part of this paper.

It must be emphasized that the Terrorist Act of 2000 and 2006 are much more elaborate and highly structured than the Polish laws, which may be attributed to the unfortunate experience, which the UK has had with the frequent terrorist attacks by the IRA in the 1970s and 1980s and 1990s, London bombings of 7 July 2005, the 2007 letter bombs, the 2007 Glasgow International Airport attack by Islamist extremists, which fortunately Poland has never had.

### **Conclusion:**

The major objective of this paper was to study whether the approximation of criminal laws in the EU eradicates the problem of the incongruity of legal concepts under different legal system, the key challenge to lawyers and translators involved in translation of law. The applied method of comparative analysis in this paper reveals that from the point of view of legal translation, *framework decisions approximate the definitions of serious criminal offences of transnational dimensions* in all the EU Member States and ensure that they establish penalties and sanctions, which reflect the gravity of such offences for those, who dare to commit them.

It must be pointed out that the approximation of the definitions of serious criminal offences does not signify that cultural dependence of law and legal language shall vanish altogether, as it shall not. However, it needs to be underlined that *the approximation of criminal laws within the EU criminal law facilitates the approximation of the elements of the SL legal system with the elements of the TL legal system*. With regard to the concept of terrorism, the non-equivalent SL and TL legal concepts of terrorism prior to the process of the approximation of laws have been transformed into partial equivalents. Owing to the approximation of the definitions of criminal offences the decrease of borderline between the referential meaning of legal concepts of terrorism under the Civil Law in force in Poland and the Common Law in effect in the UK has become a viable process.

It has to be underlined that the approximation of the definitions of serious criminal offences examined in this paper is limited to the territory of the EU, as the approximation of criminal laws is a strictly EU phenomenon. Therefore, the definitions of the said criminal offence predictably diverge in any other part of the world, as do any other serious criminal offences, which have not been become subject to the approximation.

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